

QUALO MARTEZ LOWERY,

$$V.$$

Respondent.

ORDER

Second, even if the Court were to characterize Petitioner’s motion to reconsider as a motion under Rule 59(e) of the Federal Rules of Civil Procedure, Petitioner cannot demonstrate

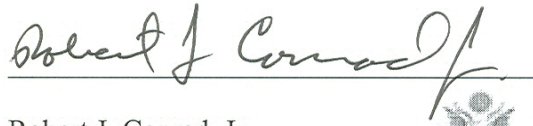
that he is entitled to any relief. In his motion to reconsider, Petitioner has reargued the points he set forth in his Section 2255 motion which this Court denied and dismissed. The Fourth Circuit has instructed that while there “may be no infallible test” for distinguishing between a properly pled motion under Rule 59(e) for relief from an order or judgment, “a relatively straightforward guide is that a motion directly attacking the prisoner’s conviction or sentence will usually amount to a successive petition.” United States v. Winestock, 340 F.3d 200, 207 (4th Cir. 2003).

For the foregoing reasons, Petitioner’s motion for reconsideration is deemed an unauthorized, successive petition under Section 2255. The motion for reconsideration is therefore denied.

IT IS, THEREFORE, ORDERED that Petitioner’s Motion to Reconsider, (Doc. No. 9), is **DENIED**.

IT IS FURTHER ORDERED that pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, this Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 474, 484 (2000) (when relief is denied on procedural grounds, a petitioner must establish both that dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right).

Signed: August 6, 2012

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

